

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. No. 14-2771 MCA

TERRANCE JULIAN,

Defendant.

ORDER DENYING MOTION TO RECONSIDER CONDITIONS OF RELEASE

This matter is before the Court on Defendant Terrance Julian's ("Julian") Motion to Reconsider Conditions of Release. *Doc. 13*. The Court considered the motion and response in opposition, *Doc. 15*, together with the United States Pretrial/Probation officer's recommendation. Oral argument is not necessary. For the reasons hereafter stated, the Motion to Reconsider is DENIED.

Julian was indicted on August 12, 2014, in Count 1 of assault with a dangerous weapon in violation of 18 U.S.C. §§ 1153, 113(a)(3) and in Count 2 of using a firearm in connection with a crime of violence in violation of 18 U.S.C. § 924(c). Count 2 is an offense that triggers the rebuttable presumption of detention under 18 U.S.C. § 3142. Title 18 U.S.C. § 3142(e) provides a rebuttable presumption that no conditions of release will reasonably assure defendant's appearance and the safety of the community "upon a finding of probable cause that defendant has committed a federal drug offense carrying a maximum prison term of ten years or more." *United States v. Stricklin*, 932 F.2d 1353, 1354 (10th Cir.1991). *See also* 18 U.S.C. § 3142(e)(3)(B) (listing 18 U.S.C. § 924(c) among offenses to which rebuttable presumption applies). "Once the presumption is

invoked, the burden of production shifts to the defendant. However, the burden of persuasion regarding risk-of-flight and danger to the community always remains with the government.” *Id.* at 1354-55.

In this case, Probation notes that Julian has received therapy for anger management and has a history of alcohol abuse. The United States notes that, in addition to the pending charges against Julian, police arrested Defendant in 2013 for a disturbance at his house and, this past June, were again called to his residence after an unknown disturbance. These facts indicate that Julian is a danger to the community where he resided during this time and militate in favor of detention or conditions of release that mitigate this danger. Further, the alleged victim in this case is a member of Julian’s family. Therefore, although Julian does have family ties in New Mexico, the nature of the present charges combined with his arrest in 2013 and the police visit in 2014 indicate that Julian should not reside in the same community as his family.

Although Defendant was employed between September 2013 and August 2014 when he was arrested in connection with this case, Probation notes that he has had no previous formal employment. This unstable employment history indicates Julian is a flight risk. Although Julian seeks release so that he can work in Dulce, New Mexico, the Court notes that he is also allowed to obtain employment while residing at the La Posada Halfway House. Further, his residence at the La Posada Halfway House provides alcohol monitoring and a structured environment away from the community in which he has had several law enforcement contacts over the last two years. Therefore, the Court finds that Julian’s current conditions of release provide the least restrictive means of assuring

Julian's appearance and the safety of the community, to include the alleged victim in this case.

Julian has presented no new evidence sufficient to warrant a change in his current conditions of release. After consideration of the factors under 18 U.S.C. § 3142(g), the Court notes that Julian is charged with a gun offense that carries a mandatory, minimum five-year prison sentence if he is convicted and a grand jury made a probable cause determination that Julian committed the crimes charged. Under these circumstances, the Court finds no reason to alter Julian's conditions of release. Therefore, Julian's Motion to Reconsider is DENIED.

IT IS SO ORDERED.


STEVEN C. YARBROUGH
UNITED STATES MAGISTRATE JUDGE